THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3137 of 2007

Dated:20.02.2007

Between:

Dasarapu Sathaiah and another.

…Petitioners

and

The Commissioner, Settlement, and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3137 of 2007

ORDER:

The petitioners are aggrieved by the order of the first respondent, dated 15.02.2007, in Case No.N2/4139/05. In this Writ Petition they seek a writ of mandamus declaring the impugned order as illegal, arbitrary and contrary to the principles of law.

The two petitioners are sons of late Yadagiri. They filed applications before the District Collector for survey of the land. The District Collector dismissed the same on 11.03.2005 in Case No.A1/725/04. They then preferred an appeal under Sections 11 and 12 of the Andhra Pradesh Survey & Boundaries Act, 1923, before the first respondent. The appeal was dismissed on 24.07.2006 for default/non-prosecution. They then preferred an application before the first respondent to set aside the order dismissing the appeal for default. When the same was not considered they filed W.P.No.17980 of 2006. This Court disposed of the same on 30.08.2006 observing that the first respondent should pass necessary orders on the application of the petitioners. Thereafter, the petitioners engaged another Counsel, and the matter was heard by the first respondent. The first respondent after considering the matter rejected the request of the petitioners for restoration of the appeal.

Learned Counsel for the petitioners submits that the Counsel

who was initially engaged by them was suffering from ill health, and therefore, he could not be present when the matter was dismissed on 24.07.2006. When the application was heard by the first respondent, the affidavit of the Counsel, who appeared earlier, was also filed, and the first respondent failed to consider the same. Learned Assistant Government Pleader, opposing the Writ Petition, points out that no evidence was placed before the first respondent in proof of the allegation that the Advocate who appeared earlier was suffering from ill health.

The first respondent while dismissing the application for restoration observed as under.

> Heard Sri Rama Rao, new Advocate for the Appellants and KMJD Syama Sundari who filed vakalat for the Respondents, in arguments. The petition dt.20.07.2006 mentions that Advocate suffered ill health and viral fever. There is no evidence or document to support this contention. Even otherwise, it is incumbent upon the concerned party or Advocate when a notice is served on them for hearing to intimate the court at the time of hearing through appropriate method about their inability to attend the hearing for whatever be the reason and request for adjournment which was not done in the instant case. While so, the restoration cannot be sought or demanded as a matter of right. I see no reason why the case dismissed in default should be restored and as such the petition requesting for restoration filed by the petitioners on 20.07.2006 is hereby dismissed.

There is no denial before this Court that no evidence was placed before the first respondent in proof of the allegations that the Advocate suffered ill health and viral fever. In the absence of any such proof, the order of the first respondent cannot be faulted.

The Writ Petition is misconceived, and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

20.02.2007
vs